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LEGISLATIVE RESEARCH COMMISSION

MENTAL PATIENT COMMITMENTS

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REPORT TO THE 1987 GENERAL ASSEMBLY OF NORTH CAROLINA

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LEGISLATIVE RESEARCH COMMISSION

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December 15, 1986

TO THE MEMBERS OF THE 1987 GENERAL ASSEMBLY:

The Legislative Research Commission herewith reports to the 1987 General Assembly on the matter of the policies for admissions and discharges of persons who have been involuntarily committed. The report is made pursuant to Chapter 790 of the 1985 Session Laws.

This report was prepared by the Legislative Research Commission's Committee on Mental Patient Commitments and is transmitted by the Legislative Research Commission for your consideration.

Respectfully submitted

Liston B. Ramsey

J. J. (Monk) Harrington

Cochairmen

Legislative Research Commission

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LEGISLATIVE RESEARCH COMMISSION

Senator J. J. Harrington, Cochairman
Senator Henson P. Barnes
Senator A. D. Guy
Senator Ollie Harris
Senator Lura Tally
Senator Robert D. Warren

Representative Liston B. Ramsey, Cochairman
Representative Christopher S. Barker, Jr.
Representative John T. Church
Representative Bruce Ethridge
Representative Aaron Fussell
Representative Barney Paul Woodard

PREFACE

The Legislative Research Commission, authorized by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" [G.S. 120-30.17(1)].

At the direction of the 1985 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The co-chairman of the Legislative Research Commission, under the authority of the General Statute 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-chairman, one from each house of the General Assembly, were designated for each committee.

The mental patient commitments study was authorized by Section 16 of Chapter 790 of the 1985 Session Laws (1985 Session). That act states that the Commission may consider House Joint Resolution 1313 in determining the nature, scope and aspects of the study. Section 1 of House Joint Resolution 1313 reads: "The Legislative Research Commission may study the policies on admission and discharge of persons with mental disorders."

The Legislative Research Commission grouped this study in its Justice area under the direction of Senator Henson P. Barnes. The Committee was chaired by Senator Ollie Harris and Representative George W. Miller, Jr. The full membership of the Committee is listed in Appendix A of this report.

REPORT

The Mental Patient Commitments Committee has held four meetings since it was created by the 1985 General Assembly. Three of those meetings were held before the Committee filed its Interim Report in May 1986; the last meeting was held in October 1986. At its second meeting the Committee heard from persons who represented almost every interest involved in the commitment process. The speakers included parents of patients, psychiatrists from state hospitals and community programs, a magistrate, an attorney who represented the patients in court hearings and one who represented the state's interest at the hearings, and various advocates for the mentally ill. After study, the Committee's conclusion is that many of the problems with the commitment process are not with the law; it is basically a good law. Accordingly, the Committee made several recommendations in its Interim Report that could be resolved by administrative action by the Department of Human Resources, Division of Mental Health, Mental Retardation and Substance Abuse Services. The Committee is pleased that the Secretary of Human Resources has concurred with the recommendations made in its Interim Report and has taken administrative steps to implement those recommendations.

In its Interim Report, the Committee had placed its highest priority on the need for continued expansion of community services for the chronically mentally ill. The General Assembly concurred in that priority and appropriated an additional $3.75 million in fiscal 1986-87 for community services for the chronically mentally ill. This additional money should enable communities to provide more comprehensive services for chronically mentally ill persons.

The Committee has seven new recommendations to make in this Report, three of which would require statutory changes.

RECOMMENDATIONS

Increase staffing at offices of Assistant Attorney General in state psychiatric hospitals.

Going to the courthouse and petitioning to have a wife, husband or child taken into custody by law enforcement officer and taken to a hospital is one of the most painful experiences in life. It is no less painful to repeat that process. The Committee heard a great deal of testimony from persons who have had to go through the process, and it is clear that family members need as much assistance in going through the process as possible. At each of the four state psychiatric hospitals and at UNC Memorial Hospital one assistant attorney general is responsible for representing the state's interest at involuntary commitment court hearings held at that facility. Because the caseload is high, in many instances the attorney does not have the time to keep the family of the respondent informed about the proceedings. Representatives of family members pointed out that sometimes they were unable to even talk with the assistant attorney general before the hearing and other times they were unable to get all the information they needed before the hearing. The problem is not one of indifference on the part of the attorneys but rather lack of time. The Committee believes the function of informing interested family members about the hearing--when it will be; how the process works; what they need to do--is critical to good representation of the state's interest. Therefore, it recommends that the General Assembly increase the Attorney General's staff at the state psychiatric hospitals to allow for increased communication with petitioners and family members of the respondent. The Committee does not believe that additional attorneys must be provided. The Appropriations Committee should consider funding a position at

each hospital similar to that of the witness coordinator for District Attorneys' offices.

Encourage development of local family support groups.

One program the Committee became familiar with in its study was the REACH program, developed originally in Winston-Salem. This program is a family support group for family members of the mentally ill. With the support of others who have undergone or are undergoing similar experiences, individuals can learn how to deal more effectively with their mentally ill relatives and how to cope with the stress engendered by that relationship. In some cities the program has expanded to provide court assistance and education to family members involved in the involuntary commitment process. The Committee was extremely impressed with the value of the family support group programs and the dedication of the volunteers and local mental health center staff who participate in the programs. The Committee hopes that each member of the General Assembly would familiarize him or herself with the REACH concept and support development of a similar program in his or her home community.

Equalization of funding for community services.

The Committee is aware that funding patterns for community mental health programs vary widely. It supports equalization of funding and recommends the passage of a bill equalizing funding similar to the one introduced by Representative Tally in the 1985 General Assembly.

Increased staff at state psychiatric hospitals.

Another concern has been the problems created by placing violent patients in with the general population in the state hospitals. In its Interim Report, the Committee indicated its concern but made no recommendations because it was

aware that the Division of Mental Health, Mental Retardation and Substance Abuse Services had recently begun its own study of that issue. The Committee received an update on the Division's study and was made aware that the Division would be requesting in the 1987-88 budget an additional 240 direct care positions to provide the ward coverage needed to manage the kinds of patients now being served in the state psychiatric hospitals. These health care technicians can provide therapeutic and not merely custodial care. This Committee fully supports the Division's request for additional direct care positions and urges the Appropriations Committees to give it highest consideration.

Give notice of commitment hearings for HB 95 patients to the trial judge.

The General Assembly has set out some special provisions in the involuntary commitment procedure that apply to a person who has been committed after having been charged with a violent crime and been found not guilty by reason of insanity or incapable of proceeding. Those respondents, referred to as HB 95 patients, may be released by a district court judge only and not by the physician. Also the district attorney and chief district judge in the district in which the respondent was found not guilty by reason of insanity or incapable of proceeding in the criminal trial must be notified of all court hearings regarding the involuntary commitment. The reason for notifying the judicial officials in the county where the respondent was released from the criminal charge is to allow them to participate in the court hearing if they wish to do so. Presumably they are most familiar with the facts involved in the criminal case and may want to present those facts to the district judge holding the commitment hearing. The Committee believes that the law should be amended to provide that notice of the commitment hearings be given to the

judge who presided at the criminal proceeding at which the respondent was found not guilty by reason of insanity or incapable of proceeding rather than the chief district judge. The Committee believes that the presiding judge rather than the chief district judge is the person who has knowledge about the case and, therefore, is the person who should receive notice. Proposed legislation to carry out this recommendation is set out as Appendix B.

Require next of kin and petitioner to be notified when an involuntarily committed patient is released.

The Committee heard a heart-rending story about an involuntarily committed patient who was released by a physician and returned by the sheriff to his community. The patient was left at a group home where he had been staying when he was committed. No one was there and the doors were locked; the patient was found several hours later outside the home where he had been waiting without a coat in the middle of the winter. Other instances of patients being returned to communities without notice to their family or friends or to the petitioner were mentioned. The Committee believes that it is important for the next of kin to know when their involuntarily committed relative has been released. Also, the petitioner who initiated the commitment should be told when the patient is released. G.S. 122C-53(b) allows the facility to disclose the fact of discharge of a client to the client's next of kin whenever the responsible professional determines that disclosure is in the best interest of the client. The Committee does not think this general provision goes far enough in the case of release of an involuntarily committed client but also recognizes the concern for confidentiality of patient records. Therefore, it proposes legislation that would require the facility to notify the next of kin and petitioner upon discharge of an involuntarily committed

respondent unless the respondent specifically requests that they not be notified. If the client requests that next of kin not be notified, the facility still may disclose the fact of discharge if the responsible professional determines that discharge is in the best interest of the client. This proposed legislation is set out in Appendix C.

Allow the local physician's/psychologist's evaluation to be made before the custody order is issued.

Sometimes when seeking an involuntary commitment, family members or friends will take a respondent to the mental health center or a private physician to have the patient examined to see if he meets the criteria for involuntary commitment. If the examining physician or psychologist believes the patient should be involuntarily committed, he will recommend that the family member petition the clerk or magistrate for a custody order. Once the custody order is issued, a law enforcement officer must take the respondent into custody and take him to the mental health center or local physician or psychologist for an examination. Thus, even though the doctor might have examined the respondent only an hour before, a new examination must be held to comply with the current law. In some cases physicians have completed the local evaluation examination form when they pre-screened the respondent; dated and timed the form when the evaluation was finished. When the custody order was issued later and the respondent was taken back to that local physician, the physician would then give the law enforcement officer the completed examination form. Some judges have dismissed those cases at the hearing because the local examination was performed before the custody order was issued, which does not follow the statutory procedure. The Committee believes the practice of taking a person to a physician or psychologist for examination

before seeking a custody order should be encouraged. If the professional does not think the patient meets the criteria, he may stop an unnecessary commitment and may be able to offer some more appropriate services. Therefore, the Committee recommends that the commitment laws be amended to allow an evaluation made within six hours preceding the issuance of a custody order to suffice as the local examination. The proposed legislation appears in Appendix D.

APPENDIX A

List of Members of Mental Patient Commitments Committee

President Pro Tem's Appointments

Sen. Ollie Harris, Cochair
Post Office Box 627
Kings Mountain, NC 28086

Mr. Cecil J. Hill
Woodside Drive
Brevard, NC 28712

The Rev. Mr. Gerald Niece
United Telephone & Telegraph Co.
720 Western Boulevard
Tarboro, NC 27886

Sen. Kenneth C. Royall, Jr.
Post Office Box 8766
Forest Hills Station
Durham, NC 27707

Sen. Daniel Reid Simpson
Post Office Drawer 1329
Morganton, NC 28655

Speaker's Appointments

Rep. George W. Miller, Jr., Cochair
3862 Somerset Drive
Durham, NC 27707

Rep. C. Melvin Creecy
Post Office Box 526
Rich Square, NC 27869

Rep. Charlotte A. Gardner
1500 West Colonial Drive
Salisbury, NC 28144

Rep. Albert S. Lineberry
Post Office Box 630
Greensboro, NC 27402

Rep. Dennis A. Wicker
315 McIntosh Street
Sanford, NC 27330

Lesislative Research Comm'n Member

Sen. Henson P. Barnes
707 Park Avenue
Goldsboro, NC 27530

APPENDIX B

A BILL TO BE ENTITLED AN ACT

TO GIVE NOTICE TO TRIAL JUDGE OF CIVIL COMMITMENT HEARING OF DEFENDANT FOUND NOT GUILTY BY REASON OF INSANITY OR INCAPABLE OF PROCEEDING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-264(d) is amended in the first sentence by deleting the words "chief district judge" and inserting in their place the words "presiding judge of the criminal proceeding at which the respondent was found not guilty by reason of insanity or incapable of proceeding".

Sec. 2. This act is effective October 1, 1987 and applies to notices issued on or after that date.

APPENDIX C

A BILL TO BE ENTITLED AN ACT TO GIVE NOTICE TO NEXT OF KIN AND PETITIONER BEFORE RELEASE OF INVOLUNTARILY COMMITTED PERSON.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-271(b) is amended by adding a new subdivision as follows:

"(5) If the court does not find that the respondent meets the criteria for commitment set out in subdivision (2) of this subsection, the 24-hour facility shall attempt, by reasonable means, to notify the respondent's next of kin and the petitioner of his release within six hours of the court's order unless the respondent, upon notice, has specifically requested that his next of kin or the petitioner not be notified of his release. However, even if the respondent requests that his next of kin not be notified, the facility may disclose the fact of his discharge pursuant to the provisions of G.S. 122C-53(b)."

Sec. 2. G.S. 122C-277(a) is amended by adding a new sentence at the end as follows: "Upon a determination to unconditionally discharge a respondent or to release respondent conditionally, the 24-hour facility shall attempt, by reasonable means, to notify the respondent's next of kin and the petitioner of respondent's release within six hours of the decision unless the respondent, upon notice, has specifically requested that his next of kin or the petitioner not be notified of his release. However, even if the respondent requests that his next of kin not be notified, the facility may disclose the fact of his discharge pursuant to the provisions of G.S. 122C-53(b)."

Sec. 3. This act is effective July 1, 1987 and applies to releases ordered or made on or after that date.

APPENDIX D

A BILL TO BE ENTITLED AN ACT

TO ALLOW THE PHYSICIAN'S EXAMINATION IN AN INVOLUNTARY COMMITMENT PROCEEDING TO PRECEDE THE ISSUANCE OF A CUSTODY ORDER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-263 is amended by adding a new subsection (g) as follows: "(g) If a physician or eligible psychologist has completed an evaluation complying with the requirements of subsections (c) through (f) of this section within six hours preceding the issuance of the custody order by a clerk or magistrate, that evaluation may be substituted for the examination required by subsection (a) of this section."

Sec. 2. G.S. 122C-283 is amended by adding a new subsection (f) as follows: "(f) If a physician or eligible psychologist has completed an evaluation complying with the requirements of subsections (c) through (e) of this section within six hours preceding the issuance of the custody order by a clerk or magistrate, that evaluation may be substituted for the examination required by subsection (a) of this section."

Sec. 2. This act is effective October 1, 1987 and applies with regard to custody orders issued on or after that date.